Legal Responsibility of Substitute Doctors Who Do Not Yet Have a License to Practice

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Submission date: 30-Jan-2023 12:15AM (UTC+0700)
Submission ID: 2001590080
File name: 30-Article_Text-335-1-10-20230126.pdf (195.97K)
Word count: 4212
Character count: 23160

INJURLENS

ISSN 2776-4974

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Citation: Junaidi, Arief. 2022. Legal Responsibility of Substitute Doctors Who Do Not Yet Have a License to Practice. *Int' Journal of Law, Environment, and Natural Resources (INJURLENS), 2 (1), 62-71.*

Academic Editor: M. Febry Saputra
Received: 13 December 2021
Revised: 20 December 2021
Accepted: 22 March 2022
Published: 10 April 2022

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Abstract: *The purpose of the need for a Practice License for a doctor is, Protection for the public and health workers, if the practice of medicine causes adverse effects on the physical, mental health or life of the patient. Then it becomes a guide for health workers in providing services to the community must have qualifications, competence, and licenses or legality, as well as community empowerment, professional organizations & existing institutions. This study aims to find out how the authority and legal consequences of substitute doctors who do not have a license to practice against the patient's losses. In this writing, the method used by the author is a type of normative legal research. Using laws and regulations and other relevant reference materials, then analyzed with applicable laws relating to the practice of doctors without a license to practice. The result of this study is the service for obtaining licenses for medical practice should be disseminated to the wider community so that the public knows how to take care of licensing, especially doctor's licenses and the service for obtaining licenses for medical practice should be disseminated to the wider community so that the public knows how to take care of licensing, especially doctor's licenses.*

Keywords: *License Doctor; The Authority of a Substitute Doctor; Patient Loss.*

1. INTRODUCTION

Law of the Republic of Indonesia Number 36 of 2009 Concerning Health, states that health is a human right and one of the elements of well-being that must be realized in accordance with the ideals of the Indonesian people as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia. Every activity in an effort to maintain and improve the highest degree of public health is carried out based on non-discriminatory, participatory and sustainable principles in the context of forming Indonesian human resources, as well as increasing resilience and national competitiveness for national development.

Things that cause health problems in the Indonesian people will cause huge economic losses for the country, and every effort to increase public health status also means investment for the country's development. Development efforts must be based on health insights in the sense that national development must pay attention to public health and is the responsibility of all parties, both the Government and the community. Law of the Republic of Indonesia Number 36 of 2009 concerning Health, states that health development is aimed at increasing awareness, willingness and ability to live healthy for everyone in order to realize optimal health status as one of the elements of general welfare as referred to in the Preamble to the Law Foundation of the Republic of Indonesia.

Health as a human right must be realized in the form of providing various health efforts to the whole community through the implementation of quality and affordable health development for the community, the implementation of medical practice which is the core of various activities in the implementation of health efforts must be carried out by doctors and dentists who have ethics and high morale. Expertise must be continuously upgraded through continuous education and training, certification, registration, licensing, as well as guidance, supervision and monitoring so that the implementation of medical practice is in accordance with developments in science and technology. In order to provide legal protection and certainty to recipients of health services, doctors and dentists, it is necessary to regulate the implementation of medical practice.

The government expects all health workers to be able to provide optimal quality health services without being forced to carry out their duties, both in government and private service facilities, as well as independent or individual practice services which are generally carried out by doctors. With the awareness and compliance of Human Resources (doctors and dentists), it will be easier for the government to provide guidance and supervision of medical services. In this regard, laws and regulations in the field of health were enacted, so that all people or the public know that all medical personnel or medical personnel are required to have minimum qualifications (Registration Certificate and Practice Permit) which are regulated by Ministerial regulations. A Doctor and Dentist who carry out health service activities must have a Practice License from the government in accordance with applicable regulations, in carrying out health services must be in accordance with medical competence. If in providing health services deviates from predetermined regulations, they will receive sanctions in accordance with applicable laws and regulations.

The purpose of the need for a Practice License for a doctor is, Protection for the public and health workers, if the practice of medicine causes adverse effects on the physical, mental health or life of the patient. Then it becomes a guide for health workers in providing services to the community must have qualifications, competence, and licenses or legality, as well as community empowerment, professional organizations & existing institutions. In certain circumstances, in the interest of fulfilling service needs, a doctor or dentist who has aLicense may replace a specialist or dental specialist, by notifying the patient of such replacement.

2. METHODS

In this writing, the method used by the author is a type of normative legal research, which is legal research based on legal material obtained through literature studies by trying to analyze a legal issue through books, literature, magazines, newspapers, or official documents in the form of laws and regulations and other relevant reference materials, then analyzed with applicable laws relating to practicing doctors without a license to practice.

3. RESULTS AND DISCUSSION

3.1. The authority of a substitute doctor who does not yet have a license to practice

Arrangements for a doctor's practice permit. Arrangements for granting a license to practice doctors and dentists are contained in Law Number 29 of 2004 concerning Medical Practice, in which it gives a mandate to create a body that will be called KKI (Indonesian Medical Council). Here the Indonesian Medical Council has the following duties:

a. Register doctors and dentists;
b. To ratify professional education standards for doctors and dentists; and
c. Provide guidance on the implementation of medical practice carried out with related institutions in accordance with their respective functions.

Law No. 29/2004 will only take effect after one year since it was promulgated, even adjustments to STR and SIP are given up to two years after the Medical Council is formed. Further regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 1419/MENKES/PER/X/2005 concerning the implementation of Doctor and Dentist Practices It also contains a form to get STR or SIP. Then KKI made regulations contained in the Regulation of the Indonesian Medical Council Number 1 of 2005 concerning Registration of Doctors and Dentists.

Every doctor and dentist who practices medicine in Indonesia is required to have a license to practice. Article 37 (1) The license to practice as referred to in Article 36 is issued by the authorized health official in the district/city where the practice of medicine or dentistry is carried out. (2) The license to practice a doctor or dentist as referred to in paragraph (1) is only issued for a maximum of 3 (three) places. (3) One license to practice is only valid for 1 (one) place of practice (Machmud, 2012).

3.2. Doctor's Practice license Management Services

The form and content of the permit must contain elements of legal certainty. Issuance of a permit must be written and generally contain the following matters (Mini, Yodo: 2004):

1. Authorized Organs

In general, the regulator will appoint an authorized organ in the licensing system, the organ that is most equipped with the relevant materials and tasks and almost always the one that is related is the government organ.

2. The address must be complete.
   Permits are addressed to interested parties. Usually permits are issued after the interested party submits an application, so that a decision containing a permit will be addressed to the party requesting the permit.
3. Dictum (the substance of the permit must be contained in the dictum)
   Decisions containing permits, for reasons of legal certainty must contain as clear a description as possible of what the permit was granted for. The dictum consists of definite decisions which contain the rights and obligations addressed by the decision.
4. Terms, limitations and conditions
   Decisions generally contain provisions, limitations and conditions which constitute the substance of a permit.
5. Giving reasons
   Relating to considerations that must be in accordance with the objective conditions of events or facts as well as legal subjects.
6. Additional notice
   Contains about possible sanctions, policies to be issued and others. Important things in licensing, among others are (Mini, Yodo: 2004):
   a. Permit denial can be done if it is related to development issues involving state interests, the environment, defense and security, ideology and others. Competition issues cannot be used as a reason for refusing a permit.
   b. Some special permits may be transferable
   c. There is a conditional release that has a measure for making a decision on a permit.
   d. The formulation of a permit must be clear according to the purpose of the permit.
   e. In the case of environmental permits, requirements for protection of sustainable development can be stipulated.
   f. Permits must be in accordance with applicable positive law. Permits can be revoked in whole or in part, if a permitted activity has a negative impact on the environment and it is not enough to be prevented by provisions or adding new requirements.
   g. Business activities are destroyed for certain reasons.
   h. Limitations in terms of the validity period of a permit (the applicant does not extend). Practice Permit, hereinafter referred to as SIP, and is written evidence given by the District/City Health Office to doctors and dentists who have met the requirements to practice medicine.

3.3. Legal Consequences of Substitute Doctors Who Do Not Have a License to Practice Therapeutic Agreement

In accordance with procedures, the authority to practice is proven by the existence of a SIP. There must be a distinction between competence and authority. The competence of a Doctor is proven by a Competency Letter from the related College which is the basis for issuing STR from KKI. Meanwhile, the authority to carry out the competence is somewhere, as evidenced by the issuance of SIP. The authority to issue SIP according to the Medical Practice Law 29/2004 and Permenkes 2052/2011 rests with the Regional Health Office (Dinkes). However, in the Law on Health Personnel 36/2014, this authority rests with the Leaders or Regional Heads on the recommendation of Regional Officials in the health sector. Need separate analysis on this matter.

The existence of a doctor who practices without SIP is a violation of procedures. On the basis of Presidential Regulation 12/2013 and Permenkes 28/2014, in submitting a SIP for a civil servant doctor to work in a private hospital, a Letter of Recommendation from the State Agency where one of the clauses reads "allow outside working hours" must be included. That is the reason for including it as "service not according to procedure". If there is a doctor who performs services without SIP in a hospital, actually it is not only the doctor concerned who bears the blame. In the case of a Doctor practicing without SIP, it is the Director who has to responsible. Articles 42 and 80 of the PK Law 29/2004 provide for a fine of Rp. 300 million for people who employ doctors without SIP. Thus, the Director is among those at risk of being subject to these sanctions.

The Director and Head of Health Facilities are asked to ensure that all Doctors have a valid SIP, and immediately apply for an extension no later than 3 months before it expires (according to article 14 of the Minister of Health 2052/2011).

When traced to the regulations, in the end the clause "must have a SIP" will also apply to all Health Workers (Health Personnel Law 36/2014). The term may be different, there is SIP, and there is SIK. But the principle is the granting of authority. This also means that the clause "services not according to procedure" can extend to whether there is a SIP/SIK for all health workers working in the hospital. Of course this should also be a concern. Not long ago, a type a hospital that took care of extending operational licenses was also threatened with not passing because of incomplete SIP/SIK for its employees.

On the other hand, BPJSK also needs to be notified that there is a clause once a doctor without a SIP at a hospital can provide consultations to patients who are being treated at that hospital. In Hospital Law no. 44/2009 article 32 letters "h" detailed in Permenkes 69/2014 concerning Patient Rights; it states that patients have the right to: request consultations about their illness from other doctors who have a Practice Permit (SIP) both inside and outside the Hospital. For that, if there is such a clause later, it should not be considered as "*outside the procedure*".

Negligence can occur in 3 forms, namely malfeasance, misfeasance and nonfeasance. Malfeasance means taking an unlawful or inappropriate action (unlawful or improper), for example taking a medical action without proper indication (the choice of medical action is already improper). Misfeasance means making the right choice of medical action but it is carried out improperly (improper performance), namely for example taking medical action by violating procedures. Nonfeasance is not doing medical action which is an obligation for him. The forms of negligence above are in line with the forms of errors (mistakes, slips and lapses) that have been described previously; however, negligence must fulfill the four elements of negligence in law - specifically the existence of a loss, while an error does not always result in a loss. Likewise, there are latent errors that do not directly have an adverse impact (see also chart 1).

Medical negligence is a form of medical malpractice, as well as the most common form of medical malpractice. Basically negligence occurs when someone accidentally does something (commission) that should not be done or does not do something (commission) that should have been done by another person who has the same qualifications in a similar situation and situation. It should be remembered that in general, individual negligence is not is an act that can be punished, unless it is done by a person who should (by virtue of the nature of his profession) act with caution, and has resulted in loss or injury to other people.

Basically, the handling of malpractice cases is based on the concepts of medical malpractice and adverse events described above. This paper will not describe the implementation on a case-by-case basis, but rather the lessons learned from experience in handling various cases of alleged malpractice, both from a professional and legal perspective.

A civil lawsuit, in this case a dispute between a doctor and a hospital dealing with a patient and their family or their attorney, can be resolved in two ways, namely litigation (through the judicial process) and non-litigation (outside the judicial process).

If settlement is chosen through a court process, then the plaintiff will submit his claim to the district court in the incident area, either by using an attorney (lawyer) or not. Based) and then the decision regarding the amount of compensation that is "appropriate" paid by the defendant to the plaintiff. In determining the right-false decision of an act, the judge will compare the act committed with a certain norm, standard, or certain propriety, while in deciding the amount of compensation the judge will consider the socio-economic position of both parties (articles 1370-1371 of the Civil Code).

If an out-of-court process is chosen (alternative dispute resolution), then the two parties try to find an agreement on dispute resolution (mufakat). The agreement can be reached by direct talks between the two parties (conciliation or negotiation), or through facilitation, mediation, and arbitration, or a combination of methods. Facilitators and mediators do not make decisions, while arbitrators can make decisions that must be obeyed by both parties. In this consensus process, efforts are made to find solutions

that tend to be based on an understanding of the interests of both parties (interest-based, win-win solution), and not right-based. Civil court judges generally offer peace before the start of the trial, and recently judges have even facilitated mediation by certain mediators.

In the event that the lawsuit is filed through the criminal law process, it is enough for the patient to report it to the investigator by showing preliminary evidence or reasons. Furthermore, it is the investigator who will conduct the investigation by carrying out police actions, such as examining witnesses and suspects, examining documents (medical records on the one hand and by law standards and instructions on the other), as well as examining expert witnesses. *Visum ET repertum* may be needed by investigators. The results of the investigator's examination are submitted to the public prosecutor so that charges can be drawn up. In the event that the investigator does not find sufficient evidence, consideration will be given to issuing SP3 or terminating the investigation.

In addition, medico-legal cases and cases that have the potential to become medico-legal cases must also be resolved from a professional standpoint with the aim of being used as a lesson to prevent repetition in the future, either by the same actor or by other actors. In this process, sanctions (professional or administrative) can be imposed for the purpose of deterrence, or without imposing sanctions but imposing corrections on the factors that contributed to the occurrence of the "*case*". Professional resolution is generally more of a clinical audit nature, and can be carried out at the local health institution level (for example in the form of Medical Committee Meetings, death conferences, case presentations, structured clinical audits, follow-up processes in incident reports system, etc.), or at a higher level (for example in a meeting of the Ethics Council of Specialist Associations, MKEK, Makersi, MDTK, etc.). If the MKEK decision states that the medical party has carried out the profession in accordance with the standards and has not committed an ethical violation, then the medical party can use the decision as a defense material.

4. CONCLUSIONS

In the event that the doctor or dentist is unable to carry out the practice, he can appoint a substitute doctor or dentist, the doctor or dentist is unable to carry out the practice, he can appoint a substitute doctor or dentist. Article 26 paragraph (3) Permenkes 2052/2011 Permit to Practice Doctor. The replacement doctor or dentist must be a doctor or dentist who has an equivalent SIP and does not have to be a SIP in that place. Article 26 paragraph (4) Permenkes 2052/2011 License to Practice Doctor. In certain circumstances, in the interest of fulfilling service needs, a doctor or dentist who has an SIP may replace a specialist or dental specialist, by notifying the patient of such replacement. (Article 26 paragraph (5) Permenkes 2052/2011 License to Practice Doctor). Any doctor or dentist who deliberately practices medicine without having a license to practice as referred to in Article 36 shall be subject to imprisonment for a maximum of 3 (three) years or a fine of up to Rp. 100,000,000.00 (one hundred million

rupiah). When there is a loss to the patient, it is resolved civilly, administratively, the doctor in question can have his registration letter revoked by the Indonesian medical council.

The service for obtaining licenses for medical practice should be disseminated to the wider community so that the public knows how to take care of licensing, especially doctor's licenses. So that licensing is no longer considered a complicated and detrimental procedure, it is best if all parties or officials related to Doctor's Practice Permits must be more informative and can make it easier for the community by making regulations that are not complicated but strict in implementation, and fast in the process.

In order to avoid malpractice and violations of legal provisions by doctors, arrangements for permits to practice doctors are to be tightened and the government should take action against doctors who open practices that are not in accordance with the provisions for permits to practice doctors and dentists as stipulated in Law Number 29 of the Year 2004 concerning medical practice so that malpractice by doctors does not occur again. It seems that a number of follow-up regulations must be made by the Medical Council and/or by the Minister of Health to clarify unclear provisions, namely regarding permits related to the place and hours of practice, "doctor placement" for the benefit of equal distribution of services, regulations for medical licenses for nurses at Balai Treatment, provisions for the completeness of medical records, benefits of *informed consent*, legal responsibility, complaint procedures, trials and sanctions, and others. Likewise other software such as education standards, competency standards, competency test administration, behaviour standards, medical service standards, standard operating procedures, supervision guidelines, medical audit guidelines, and others.

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